

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

[1] BOBBY GENE SMITH,)	
)	
Plaintiff,)	
)	
vs.)	Case No. <u>CIV-17-1007-C</u>
)	
[1] STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a Foreign Corporation,)	Removed from: Oklahoma County
)	Case No. CJ-2017-4859
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant, State Farm Mutual Automobile Insurance Company, a Foreign Corporation ("SFMAIC"), hereby removes this action from the District Court of Oklahoma County, Oklahoma, to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

In support of this Notice of Removal, the Defendant states as follows:

I. BACKGROUND AND FOUNDATION FOR REMOVAL

1. On August 25, 2017, Plaintiff filed her Petition in the District Court of Oklahoma County, Oklahoma, captioned: *Bobby Gene Smith v. State Farm Mutual Automobile Insurance Company, a Foreign Corporation*, Case No. CJ-2017-4859.

2. The Petition, Summons, and Plaintiff's First Set of Interrogatories and Requests for Production of Documents¹, were served upon SFMAIC (by serving the Oklahoma Insurance Commissioner) on August 31, 2017. Pursuant to LCvR 81.2, copies of the Petition, Summons, Set of Interrogatories and Requests for Production of Documents, and the Oklahoma County Docket Sheet are attached hereto as Exhibits 1, 2, 3, and 4. No other pleadings, process, or orders have been served on the Defendant.

3. Pursuant to LCvR 3.1, this Notice of Removal is accompanied by a Civil Cover Sheet, Form JS-44, attached hereto as Exhibit 5.

4. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Further, this matter is one that may be removed to this Court pursuant to 28 U.S.C. § 1441 because it is a civil action that is among citizens of different states and in which the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

5. Venue is proper in this Court because this action is pending in the District Court of Oklahoma County, Oklahoma. *See* 28 U.S.C. § 1441(a)

II. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS.

6. There is a complete diversity of citizenship among the parties:

- (a) Plaintiff. Bobby Gene Smith is a resident of Oklahoma County, Oklahoma. (*See* Petition, ¶1, Ex. 1).

¹ Pursuant to LCvR81.2(c), this discovery is considered void. State Farm will participate in discovery in accordance with the applicable Federal Rules of Civil Procedure and the Local Court Rules (Civil) for the Western District of Oklahoma.

- (b) Defendant. State Farm Mutual Automobile Insurance Company is an Illinois corporation, with its principal place of business located in Bloomington, Illinois. Thus, Defendant is not a citizen of Oklahoma and is diverse from the Plaintiff.

III. THE AMOUNT IN CONTROVERSY EXCEEDS THE AMOUNT REQUIRED FOR DIVERSITY JURISDICTION

7. Plaintiff's Petition alleges that on or about the 26th day of September, 2016, an unknown person negligently drove into the front driver's side of Plaintiff's vehicle and then fled the scene; that a witness followed the person that caused the accident and obtained the tag number and provided it to the police, but the tag number did not match the vehicle that was being operated by the hit and run driver; and, that as a result of the negligence of the unknown hit and run driver, Plaintiff sustained injury to her person and damage to her vehicle (*See* Petition, ¶¶ 6-8, Ex. 1).

8. Plaintiff further alleges that she was insured with SFMAIC, under a policy with Uninsured Motorist Coverage at the time of the subject collision; that Plaintiff made a claim for Uninsured Motorist Benefits with SFMAIC, but SFMAIC has failed and refused to fully compensate her in accordance with the terms of the Uninsured Motorist Policy and established Oklahoma law; that SFMAIC has breached its contractual obligations and fiduciary duties; and that SFMAIC has breached the owed duty of good faith and fair dealing including but not limited to one or more of the following ways:

- a. engaging in an improper claims investigation;
- b. engaging in improper claim evaluation

- c. improper delay of payment of Uninsured Motorist proceeds owed pursuant to the insurance contract and established Oklahoma Law;
- d. improper denial of payment of Uninsured Motorist Benefits owed pursuant to the insurance contract and established Oklahoma Law;
- e. under-evaluating or "low-balling" Plaintiff's Uninsured Motorist Claim;
- f. offering the Plaintiff less than the full value of her Uninsured Motorist Claim;
- g. Refusing to fully compensate Plaintiff in accordance with the terms of the insurance contract and established Oklahoma Law;
- h. Forcing Plaintiff to file suit to obtain benefits that she is owed; and
- g. That the actions of SFMAIC constitute Bad Faith and are acts that are oppressive, intentional, malicious, willful, wanton and with utter and reckless disregard for its duty to deal fairly with its insured and act in good faith. (See Petition, ¶¶ 12-13, and 15-17, Ex. 1).

9. Diversity jurisdiction requires the removing party to demonstrate the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. See 28 U.S.C. § 1332. Here, the amount in controversy will exceed \$75,000.00, exclusive of interest and costs.

10. Plaintiff asserts that as a result of SFMAIC's breach of contract and bad faith conduct, she is seeking damages (actual, contractual, extra-contractual, special and general compensatory, and punitive) in excess of \$75,000. (See Petition, ¶¶ 19 and 23[sic] and the *ad damnum*, Ex. 1).

11. SFMAIC denies the allegations in Plaintiff's Petition. By filing this Notice of Removal, SFMAIC does not waive any defenses that may be available to it, nor does it waive any defenses related to proper service of the Petition. Taking

the allegations on their face as true, however, as this Court must do for the purpose of determining the propriety of removal, it is clear that Plaintiff's claims, as evidenced by the Petition, demonstrate an amount in controversy in excess of \$75,000.

IV. CONCLUSION.

12. This Notice of Removal is timely filed, pursuant to 28 U.S.C. § 1446(b).

13. Defendant certifies it will promptly give written notice of the filing of this Notice of Removal to all known counsel of record, and will likewise file a copy of this Notice of Removal with the District Court of Oklahoma County, Oklahoma.

14. Given the complete diversity of the parties and an amount in controversy in excess of \$75,000, this Court has jurisdiction over this cause of action and the claims asserted pursuant to 28 U.S.C. § 1332, and this action is properly removable pursuant to 28 U.S.C. § 1441.

WHEREFORE the Defendant, State Farm Mutual Automobile Insurance Company hereby removes this matter from the District Court of Oklahoma County, Oklahoma to the United States District Court for the Western District of Oklahoma.

Respectfully submitted,

s/ 

F. Thomas Cordell, OBA #1912

Timothy J. Prentice, OBA #22689

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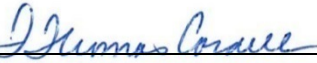
CERTIFICATE OF SERVICE

☒ I hereby certify that on the 18th day of September, 2017, I filed the above and foregoing document with the Clerk of Court and served the attached document by Email on the following:

Christopher T. Yanda

THE LAW FIRM OF CHRISTOPHER T. YANDA, P.C.

Email: chris@christopheryanda.com

s/ 

F. Thomas Cordell

I further certify that a copy of the above and foregoing document was attached to a Notice of Filing Notice of Removal and was mailed for filing, via U.S. Mail, on the 19th day of September, 2017 to:

Rick Warren, Court Clerk

OKLAHOMA COUNTY

320 Robert S. Kerr Avenue

409 County Office Bldg.

Oklahoma City, OK 73102

s/ 

F. Thomas Cordell